



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 391

Driver Qualifications; Regulatory Guidance Concerning the Applicability of Language Requirement to Drivers Who Do Not Meet the Hearing Standard

AGENCY: Federal Motor Carrier Safety Administration

ACTION: Notice of regulatory guidance.

SUMMARY: The FMCSA provides regulatory guidance concerning the applicability of the driver qualification requirement that interstate drivers must be able to read and speak the English language sufficiently to converse with the general public and respond to official inquiries to drivers who do not meet the Agency's hearing standard. The guidance explains that the English-language rule should not be construed to prohibit operation of a commercial motor vehicle (CMV) by hearing impaired drivers who can read and write in the English language but do not speak, for whatever reason. While the Federal Motor Carrier Safety Regulations (FMCSRs) prohibit individuals who do not meet the hearing standard from operating CMVs in interstate commerce, FMCSA has granted exemptions to a number of hearing-impaired individuals. Some hearing impaired drivers have advised the National Association of the Deaf that they have been told by State licensing agency officials that they do not meet the English language requirement essentially because they do not speak. This guidance is intended to address the perceived conflict between the exemptions and the manner in which FMCSA regulations are being applied to hearing impaired drivers.

DATES: This guidance is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations; 1200 New Jersey Ave. SE., Washington, DC 20590, Telephone 202-366-4325, E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Secretary of Transportation has statutory authority to set minimum standards for commercial motor vehicle safety. These minimum standards must ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators; and (5) an operator of a CMV is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation. (49 U.S.C. 31136(a)(1) – (5), as amended). The Secretary also has broad power in carrying out motor carrier safety statutes and regulations to "prescribe recordkeeping and reporting requirements" and to "perform other acts the Secretary considers appropriate." (49 U.S.C. 31133(a)(8) and (10)).

The Administrator of FMCSA has been delegated authority under 49 CFR 1.87(f) to carry out the functions vested in the Secretary of Transportation by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

Background

History of the English Language Requirement

On December 23, 1936, as part of its newly-promulgated “Motor Carrier Safety Regulations,” the Interstate Commerce Commission (ICC) established an English language requirement for drivers of motor vehicles operated in interstate or foreign commerce by common and contract carriers. The original wording, as contained in paragraph 3 of Part I [Qualification of Drivers] required that:

On and after July 1, 1937, no motor carrier shall drive, or require or permit any person to drive, any motor vehicle operated in interstate or foreign commerce, unless the person so driving possesses the following minimum qualifications: * * * (k) Ability to read and speak the English language, unless the person was engaged in so driving on July 1, 1937 or within one year prior thereto, but in any case ability to understand traffic and warning signs. (1 M.C.C. 1, at 18-19)

The preamble to the I.C.C. decision stated that:

It is evident that ability to read and speak English is important to any adequate compliance with safety regulations. Cognizance has been taken, however, of the existence in certain areas of numbers of drivers in present service who are unable to read or speak English, but even in these cases the ability at least to understand traffic and warning signs is required. (1 M.C.C. 1, at 7-8)

On May 27, 1939, the ICC made certain changes and additions to the Motor Carrier Safety Regulations, including elimination of the exceptions granted by the original rules for those drivers unable to read and speak English. As stated in that notice,

“The intent of the Commission to require such ability of all drivers in this service has been unmistakable since 1937, and the intervening period of more than two years is regarded as sufficient to justify the removal of the exception.” (14 M.C.C. 669, at 675)

Section 391.11(b)(2) of the Federal Motor Carrier Safety Regulations (FMCSRs) currently states that a person is qualified to drive a commercial motor vehicle if he/she “can read and speak the English language sufficiently to converse with the general public,

to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.”

Relationship between the English Language Rule and the Hearing Standard

Currently, FMCSA’s physical qualifications standards under 49 CFR 391.41(b)(11) require that drivers be capable of hearing a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid.

Section 391.41(b)(11) Exemptions

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the safety regulations for a 2-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.” The statute also allows the Agency to renew exemptions at the end of the 2-year period.

On February 1, 2013, FMCSA announced its decision to grant requests from 40 individuals for exemptions from the Agency’s physical qualifications standard concerning hearing for interstate drivers (78 FR 7479). After notice and opportunity for public comment, the Agency concluded that granting exemptions for these CMV drivers will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions. As part of the process for reaching this decision, the Agency considered the medical status of each applicant and evaluated their crash and violation data; some of the applicants were driving CMVs in intrastate commerce. The Commercial Driver’s License Information System and Motor Carrier Management

Information System were searched for crash and violation data on the applicants and each of them demonstrated a safe driving history. The FMCSA granted exemptions that allow these 40 individuals to operate CMVs in interstate commerce for a 2-year period. Subsequently, FMCSA granted an additional 20 exemptions and requested public comment on more than 70 applications for exemptions from the hearing standard. The exemptions preempt State laws and regulations and may be renewed by FMCSA.

Following the decision to grant exemptions, because some hearing-impaired drivers granted exemptions do not speak English, it has been asserted that they may not meet the requirements of § 391.11(b)(2) and may not be qualified to operate CMVs in interstate commerce, even though they can read and write in English. This issue was first raised by the National Association of the Deaf in discussions with the Agency prior to the granting of the exemptions and continues to be an issue in need of clarification.

FMCSA's Decision to Issue Regulatory Guidance

In consideration of the above, FMCSA has determined that regulatory guidance should be issued to make clear that, for drivers exempted from the hearing standard in 49 CFR 391.41(b)(11) who cannot speak English, the ability to read and write in English is sufficient to satisfy the English-language requirement of 49 CFR 391.11(b)(2). The FMCSA adds Question 7 to its guidance for 49 CFR 391.11, to read as follows:

Qualification and Disqualification of Drivers; Regulatory Guidance for 49 CFR 391.11(b)(2)

Question 7: Would a driver who fails to meet the hearing standard under 49 CFR 391.41(b)(11) but has obtained an exemption from that requirement, be considered

unqualified under the English language proficiency requirement in 49 CFR 391.11(b)(2) if the driver cannot communicate orally in English?

Guidance: No, if the hearing impaired driver with an exemption is capable of reading and writing in the English language. In that circumstance, the hearing impaired driver satisfies the English language requirement. The absence of an ability to speak in English is not an indication that the individual cannot read and write in English sufficiently to communicate with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.

Issued on: September 25, 2014

T. F. Scott Darling, III
Acting Administrator

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